

REHABILITATION AGREEMENT

This Agreement, entered into this 3rd day of February, 1978, by and between Boston Redevelopment Authority, a public body politic and corporate, existing pursuant to Chapter 121B of the Massachusetts General Laws, and having its usual place of business in Boston, Massachusetts, and any successor in interest, whether by act of a party to this Agreement or by operation of Law or otherwise (hereinafter called the "Authority"), and Durgin Park, Inc., a Massachusetts Corporation having its usual place of business in Boston (hereinafter called "Redeveloper"), the owner in fee simple of the premises now known and numbered 29-32 North Market Street in the City of Boston, Suffolk County Massachusetts (hereinafter called the "Premises").

W I T N E S S E T H

WHEREAS, in furtherance of the objectives of the Federal Housing Act of 1949, as amended, and the Massachusetts Housing Authority Law, the Authority has undertaken a program for the clearance and reconstruction or rehabilitation of various areas of the City of Boston; and

WHEREAS, pursuant to said program the Authority is engaged in carrying out an urban renewal project known as the "Downtown Waterfront-Faneuil Hall Urban Renewal Project", (hereinafter the "Project Area"), which includes the said Premises; and

WHEREAS, a plan for the execution of the said urban renewal project, called the "Downtown Waterfront-Faneuil Hall Urban Renewal Plan", was adopted by the Authority on April 24, 1964 and approved by the City

Council of Boston on June 8, 1964, and amended on April 8, 1965 which plan was recorded with the Suffolk County Registry of Deeds at Book 7948, Page 527 (hereinafter the "Plan"); and

WHEREAS, in order to achieve the objectives of the Plan and to protect and encourage new public and private investment in the Project Area, it is necessary to rehabilitate certain properties in the Project Areas as set forth in the Plan, including the said Premises; and

WHEREAS, in furtherance of the Plan, the Authority has commenced rehabilitation of the buildings in the general area of the Premises, and the Redeveloper is desirous of personally undertaking the rehabilitation of the Premises.

NOW THEREFORE, in consideration of one dollar each to the other paid, the receipt whereof is hereby acknowledged and the mutual covenants herein contained, the parties hereto agree as follows:

1. The Redeveloper agrees that it shall effect the restoration, renovation or improvement of the exterior facades of the Premises so as to conform the said Premises generally to the exterior appearance of the North and South Market Buildings as restored, as shown on the elevation drawing attached hereto marked "Exhibit A" and made a part hereof. In accomplishing the said restoration, renovation and improvements Redeveloper agrees to do the work set forth generally in subsections a to l below. Said subsections a to l are intended to be guidelines and not limitations of the work to be performed by the Redeveloper.

- a. GRANITE - The basic granite framework at all levels will be made to match the adjacent restored facades. The facade of the Premises appears to be fairly intact, but all paint and other deleterious material will be removed, and all granite pieces patched or replaced as necessary to restore them to their original condition.
- b. BRICKWORK - The rear wall will be repointed and thoroughly cleaned, with sills, lintels and bricks replaced as necessary to restore the said wall to its original condition. *f.p.b*
- c. ROOF - All chimneys, snowguards, *F*lashing and party walls will be brought into conformity with the adjacent North Market Buildings. *CHIMNEY HEIGHTS ABOVE SIGHT LINE IS REQUIRED BY A PUBLIC OR SAFETY AGENCY WILL BE MAINTAINED* *R.M.B*
- d. OPENINGS - All openings in the masonry will be returned to their original configuration. Bricked up or blocked out windows and doors will be reopened.
- e. DORMERS - All dormers and skylights will be rebuilt to match those on the reconstructed adjacent North Market Buildings.
- f. GROUND FLOOR - All existing ground floor treatments, except the granite framework will be removed. All new "infill" treatments will conform to the guidelines prepared for the rest of the North Market Buildings, unless the Authority specifically approves an alternative design such as cast iron arch configuration in accordance with its Design Review Process.
- g. SIGNANGE - All signs will be removed as the North Market Building is rehabilitated. A new signage program will be coordinated with the Authority.

- h. CANOPY - Existing canopies, guy wire, and fastenings must be ~~REMOVED~~ approved. *NB*
 - i. FIRE ESCAPES - The existing fire escapes will be painted and rehabilitated to improve their appearance. They may continue to be used. Should egress through adjacent buildings become available to the Redeveloper on a permanent basis which egress would satisfy the requirements for safety exists for a restaurant, without unduly restricting the Redeveloper's use of the premises, then and in that event the Redeveloper agrees to remove the existing fire escapes.
 - j. OTHER EQUIPMENT -
 - (1) A rear hoist mechanism may be retained but the details of same shall be subject to the Design Review and approval of the Authority's Design Review staff.
 - (2) All window air conditioners will be removed.
 - (3) No mechanical equipment will protrude outside the basic building envelope. This includes all exhaust hoods and vent openings on the walls and the existing equipment on the roof. Venting equipment will be allowed in the roof so long as it is made to conform as much as practicable with the other parts of the roof and so long as it does not extend above the roof line. If, however, any public or safety agency requires that the said venting equipment extend above the roof line, such extention will be allowed in order that such requirements may be met.
 - (4) The exhaust fans shall be property grilled.

- (5) The rear vent stack will be repaired, recovered and/or repainted to improve its appearance in conformity with the rehabilitation of the building.
- k. Except as allowed for herein, the buildings should resemble as much as practicable the other buildings in the North Market Building.
1. WINDOWS - Existing wooden window design shall remain the same and will not be required to conform to the windows treatment in the adjacent buildings.
2. The Redeveloper agrees that it shall furnish to the Authority for its approval plans and/or specifications, prepared by a competent architect, or engineer showing the detailed character of the restoration, renovation and improvements of the Premises as set forth in Section 1 above.
3. The Authority agrees that it shall at all stages of the Redeveloper's preparation, planning and performance of the redevelopment hereunder make available to the Redeveloper its architectural, engineering and design staffs to assist the Redeveloper in all practicable ways in the redevelopment of the Premises.
4. The Authority shall review the plans and/or specifications submitted to it by the Redeveloper in accordance with Section 2 above and shall as soon as practicable notify the Redeveloper of its approval or any suggested changes to be made therein. If the Authority has suggested changes in said plans or specifications it shall notify the Redeveloper and the Redeveloper shall as soon as possible furnish new plans and specifications incorporating said suggested changes.

5. The restoration work on the Premises shall be commenced by the Redeveloper so as to be completed when the other building in the North Market Building are opened and made available to tenants by the Faneuil Hall Marketplace Associates. Notwithstanding anything herein to the contrary contained, the Redeveloper will not be obligated to commence the construction of the improvements set forth in Section 1 (a, b, c, d, e, f, g, h, i, j, k, and l) until such time as the rehabilitation of the other buildings in the North Market Building is commenced.
6. It shall be the Redeveloper's sole responsibility to procure all licenses and permits from any and all governmental agencies necessary to perform the rehabilitation work called from hereunder. However, the Authority will cooperate and assist in all reasonable ways to assist the Redeveloper in procuring said licenses and permits. No licenses or permits will be procured until after final approval of the plans and specification by the Authority.
7. Promptly upon being notified by the Redeveloper that the rehabilitation work on the Premises has been completed, in accordance with the Plans and Specifications approved by the Authority, the Authority will examine said rehabilitation and if it finds the said work to be completed shall issue forthwith to the Redeveloper a Certificate of Completion, which shall be in a form sufficient for its recording in the Registry of Deeds and shall be conclusive evidence of the fact that the obligation of the Redeveloper to rehabilitate the Premises has been met, and that the improvements, renovations and restorations of the exterior facades of the Premises have been completed.

8. The Redeveloper agrees that, on demand of the Authority, it will forthwith grant to Faneuil Hall Marketplace Associates, in accordance with the plans attached hereto and made a part hereof as Exhibit "B", easements in the cellar and attic of the Premises for the installation, maintenance, repair, alterations and replacement of utility pipes, conduits, wires and lines of all types and nature for the benefit of some or all of the other buildings comprising North Market Building. The agreements confirming such grants of easement shall provide to Faneuil Hall Marketplace Associates the right of access to the Premises for the purpose of installing, maintaining, repairing, altering or replacing such utilities equipment at reasonable times and upon reasonable prior notice to the Redeveloper. Any work by Faneuil Hall Marketplace Associates in the Premises pursuant to such grants of easements shall be performed in such a manner as to minimize interference with the Redeveloper's normal business operations.
9. The Redeveloper agrees that it shall, on demand of the Authority, grant to the Authority all its right, title and interest, if any, as abutting landowner, in and to North Market and Clinton Streets. The Authority agrees that it shall reserve, or cause the reservation of, public easements for pedestrian traffic over such streets. In addition, the Authority agrees for itself and Faneuil Hall Marketplace Associates as follows:
 - a. That the presently existing passageway from Clinton Street to North Market Street through the North Building shall be maintained and shall remain open to pedestrian traffic.

- b. That no fixtures or improvements for uses other than as a pedestrian walkway shall be placed in that section of North Market Street directly in front of the Premises and that such area shall not be rented or leased to any person or entity for any purpose.
- c. That if any tenant of the North Market Building shall in the future have the right to maintain a sidewalk cafe in North Market Street, the Redeveloper shall have the same right in the area of North Market Street immediately in front of the Premises on terms no less favorable than the terms of any lease entered into with any such tenant. The Redeveloper when using the said North Market Street for a sidewalk cafe shall not be required to pay any rent therefore but agrees that it will not use the said street in such a way as to block access to and from adjacent premises, and shall maintain such area in as clean and orderly condition as the adjacent areas of Faneuil Hall Marketplace.
- d. That restoration work done on the other sections of the North Market Building and work to be done on the streets and ways adjacent thereto shall be conducted in such a manner as not unreasonably to interfere with the Redeveloper's normal business operations.
- e. That the Redeveloper or its successors shall have the right to use Clinton Street to service the Premises. In addition the Redeveloper shall have the right to use North Market Street for the same purposes and in the same manner as tenants in the adjacent premises.

10. Redeveloper, for itself and their successors and assigns, covenant, promise and agree:

- a. Until the year 2004 to devote the Premises generally to office, general business, restaurant and tavern uses as are not inconsistent with the general objectives of the Plan (it being hereby acknowledged that the present uses are not inconsistent with the general objectives of the Plan); and
- b. To the maximum extent possible, to give preference in the leasing of space in the buildings to be rehabilitated on the Premises to former occupants of the Downtown-Waterfront-Faneuil Hall Urban Renewal Project Area in Boston, who have been dislocated as a result of redevelopment in the Project Area; and
- c. After completion of the work described in Section 1 hereof, to maintain the facades of the premises in good order, appearance and repair at all times and not to make any change or alteration whatsoever in the exterior appearance of same without first obtaining the written consent of the Authority; and
- d. Not to discriminate upon the basis of religion, race, creed, sex, color or national origin in the sale, lease or rental, or in the use or occupation of the Premises, or any improvements erected or to be erected thereon or any part thereof.

It is intended and agreed that the covenants in this Section shall be for the benefit of the Authority as owner of some or all of the buildings comprising North Market Building and any person claiming by, through or under the Authority and said covenants shall be covenants

running with the land and covenants to the same effect shall be contained in any instruments from Redeveloper, their successors and assigns, conveying the Premises or any part thereof or interest therein and shall be expressed therein to be covenants running with the land.

11. Where, pursuant to this Agreement, any document or proposed action by Redeveloper is submitted to the Authority, and Redeveloper has been notified in writing by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by Authority with respect to such particular document or proposed action for which such approval or notice of satisfaction was given. Where the consent or approval of Authority is required hereunder, such consent or approval shall not be unreasonable withheld.
12. Neither Authority nor Redeveloper, as the case may be, shall be considered in breach of or in default in its obligations hereinabove in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including, but not restricted, to acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, flood, epidemics, quarantine, restrictions, strikes, freight embargoes, and unusually severe weather, or delays of contractors or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of such obligations shall be extended for the period of the delay as determined by the Authority, provided, however, that the party seeking the benefit of

this section shall within thirty (30) days after the beginning of any such delay, have first notified the other party thereof in writing, and of the cause or causes thereof. In calculating the length of the delay, the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages. However, in no event shall any financing difficulty be a cause for an extension hereunder, unless resulting from causes as described in this section.

13. The Authority agrees that it will use all reasonable efforts consistent with the public interest, to expedite the execution of the Plan it being understood by the Authority that the economic feasibility of the rehabilitation by the Redeveloper hereunder depends upon timely execution of the Plan as it relates to the Faneuil Hall Market Area. The Authority further agrees that so long as the Redeveloper complies in a timely fashion with its obligations hereunder not to acquire the Premises under the provisions of Section 504 of the Plan. In the event of the failure of the Redeveloper to perform its obligations hereunder the Authority reserves all of its rights under the Plan and hereunder.
14. In the event that the Redeveloper shall fail or refuse to submit plans and specifications satisfactory to the Authority in accordance with Sections 2 and 4 hereof or to commence and complete the rehabilitation in accordance with Section 5 hereof or to grant the rights, easements and estates mentioned in Section 8 and 9 hereof, as provided therein, and such failure or refusal continues for a

- period of thirty (30) days after written notice to the Redeveloper by the Authority, the Authority shall have the right in its sole discretion to terminate all of its obligations hereunder and to acquire the Premises in accordance with the provisions of the Plan.
15. It is understood between the parties that in the event either party hereto fails to comply with the provisions hereof the other party may institute such action and proceedings as may be appropriate, including actions to compel specific performance and actions to recover damages, expenses and costs.
 16. This agreement and the rights of the Authority hereunder may be assigned by it to, (and following any such assignment, may be enforced by) any person, firm or corporation to which the Authority may sell, lease, assign or otherwise transfer or convey the North Market Building or any portion thereof or interest therein, and may be reassigned by any such person.
 17. Unless otherwise specifically provided in this agreement or unless otherwise notified to the contrary by the party to whom notice is to be given, all notices called for or required to be given hereby shall be effective and valid when given in writing, signed by a duly authorized officer or agent of the Authority or the Redeveloper and delivered in hand, or sent registered or certified mail postage prepaid, to the parties as follows:

Authority:

Robert F. Walsh, Director
Boston Redevelopment Authority
Room 901
City Hall
Boston, Massachusetts 02201

Redeveloper:

Durgin Park, Inc.
Eugene Kelley, President
29-30 North Market Street
Boston, Massachusetts 02109

Or to such other persons or address as shall be designated from time to time by either of the parties by written notice given to the other party.

IN WITNESS WHEREOF, on the date and year hereinabove first wirtten, at Boston, Massachusetts, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered.

Signed, sealed and delivered
in the presence of:

BOSTON REDEVELOPMENT AUTHORITY

By _____
Robert F. Walsh, Director

DURGIN PARK, INC.

By Eugene Kelley
Eugene Kelley, President

Approved as to form:

Charles J. Speleotis
Chief General Counsel

ADDENDUM

In consideration of one (\$1.00) dollar to it paid, receipt whereof
is hereby acknowledged FANEUIL HALL MARKETPLACE ASSOCIATES hereby
assents and agrees to be bound by the terms of the foregoing contract in
so far as the same apply to it. Further the said FANEUIL HALL MARKETPLACE
ASSOCIATES acknowledge that the terms of the foregoing agreement satisfy
fully all of the Boston Redevelopment Authority's obligation to it in so
far as the Donovan premises at 27-28 North Market Street are concerned.

FANEUIL HALL MARKETPLACE ASSOCIATES

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

OCTOBER , 1977

Then personally appeared the above-named
of FANEUIL HALL MARKETPLACE ASSOCIATES who executed
the foregoing instrument and acknowledged the same to be the free act
and deed of said Faneuil Hall Marketplace Associates.

Before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

, 1977

Then personally appeared before me the above-named

ROBERT F. WALSH

Director who executed the foregoing instrument on behalf of the Boston
Redevelopment Authority and acknowledged the same to be the free act and
deed of said Authority.

Before me,

Notary Public
My Commission Expires

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

July 2, 1978

Then personally appeared before me the above-named

EUGENE KELLEY

President of Durgin Park, Inc., who executed the foregoing instrument
and acknowledged the same to be the free act and deed of Durgin Park,
Inc.

Before me,

Robert Walsh

Notary Public
My Commission Expires *July 14/98*

MEMORANDUM

MARCH 9, 1978

TO: BOSTON REDEVELOPMENT AUTHORITY
FROM: ROBERT F. WALSH, DIRECTOR
SUBJECT: REHABILITATION AGREEMENT - DURGIN PARK, INC.
29-32 NORTH MARKET STREET

3593

The lease entered into between the Boston Redevelopment Authority and Faneuil Hall Marketplace Associates requires us to procure from Durgin Park, Inc. a rehabilitation agreement concerning their premises at 29-32 North Market Street.

The Agreement which is quite complex covers easements through the buildings, release of property rights in adjacent streets and the manner of rehabilitating the exteriors of the buildings. Our legal staff, Durgin Park's attorneys and the attorneys for Faneuil Hall Marketplace Associates have settled on a final form for the Agreement. The Agreement has already been executed by Durgin Park. Faneuil Hall Marketplace Associates has formally assented and agreed that the Agreement as drafted satisfy fully our obligations under their lease.

It is therefore recommended that the Authority approve and execute the Agreement.

An appropriate Vote follows.

VOTED: That the Director be and he hereby is authorized and directed by and on behalf of the Boston Redevelopment Authority to sign, seal, execute and deliver the Rehabilitation Agreement between the Authority and Durgin Park, Inc. which Agreement was executed by Durgin Park, Inc. on February 2, 1978, and has been assented to by Faneuil Hall Marketplace Associates.

